

2009 DRAFTING REQUEST

Bill

Received: **09/23/2008**

Received By: **jkreye**

Wanted: **Soon**

Identical to LRB:

For: **Administration-Budget**

By/Representing: **Lillethun**

This file may be shown to any legislator: **NO**

Drafter: **jkreye**

May Contact:

Addl. Drafters:

Subject: **Tax, Other - sales**

Extra Copies:

Submit via email: **NO**

Pre Topic:

DOA:.....Lillethun, BB0107 -

Topic:

Imposing the sales and use tax on towing and hauling motor vehicles

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P1	jkreye 09/23/2008	jdye 09/23/2008	rschluet 09/23/2008	_____	mbarman 09/23/2008		S&L
/P2	jkreye 10/10/2008	jdye 10/10/2008	rschluet 10/10/2008	_____	sbasford 10/10/2008		S&L

FE Sent For:

<END>

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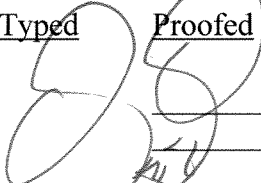
Topic:

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Instructions:

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FE Sent For:

<END>

6378

2009-11 Budget Bill Statutory Language Drafting Request

- Topic: Towing and Hauling Motor Vehicles
- Tracking Code: BB0107
- SBO team: Tax, Transportation and Budget Development Team
- SBO analyst: Chad Lillethun
 - Phone: 266-7597
 - Email: Chad.Lillethun@wisconsin.gov
- Agency acronym: DOR
- Agency number: 566
- Priority (Low, Medium, High): Low

Intent:

Impose sales tax on the flatbed hauling of motor vehicles. Current statutes impose sales tax on "towing," but towing is not statutorily defined. The Department of Revenue has issued rulings to individual taxpayers indicating that flatbed hauling of a motor vehicle is not subject to sales or use tax as towing. The statute should be updated to include both towing and hauling of vehicles. (See attached description and drafting instructions.)

**2009-2011 Legislative Proposal
Wisconsin Department of Revenue
IS&E Division**

Date: September 15, 2009

PROPOSAL 12: Towing and Hauling Motor Vehicles

DESCRIPTION OF CURRENT LAW AND PROBLEM

Section 77.52(2)(a)10., Wis. Stats. (2005-06), imposes Wisconsin sales tax on, among other things, "towing...of all items of tangible personal property." "Towing" is not defined in the Wisconsin statutes. When a particular term is not defined in the statutes, the courts and others interpreting the meaning of the statutes will look to the ordinary dictionary definition for guidance.

Webster's New Collegiate Dictionary, 1979, in part, defines "tow" to mean "...to draw or pull along behind : HAUL..." Webster's II New College Dictionary, 1995, in part, defines "tow" to mean "To draw or pull along behind by a chain or line..."

With respect to motor vehicles, these definitions of "tow" accurately described how motor vehicles were brought to repair shops or removed from accident scenes - up until recently. Now, these definitions no longer adequately describe how "towing" services are performed by "towing" companies. Although there are still some companies that "tow" (under the definitions above) motor vehicles to repair shops and "tow" vehicles from accident scenes, most companies that provide these services now either winch or drive the vehicle up onto a flatbed truck and "haul" (i.e., all 4 tires of the vehicle are off the ground), the vehicle to the repair facility or from the accident scene. According to information provided by the Wisconsin Towing Association, the reason that flatbed hauling of motor vehicles has become the standard industry practice is that modern vehicles have "...fragile fiberglass fascia and plastic body panels..." that need to be protected.

The Department of Revenue has issued rulings to individual taxpayers indicating that the hauling of a motor vehicle on a flatbed truck is not subject to Wisconsin sales or use tax as "towing."

Although the Legislature clearly intended to tax the service of "towing" motor vehicles, due to the methods in which modern motor vehicles are now being transported to repair facilities and away from accident scenes (i.e., they are being hauled on flatbed trucks instead of being towed behind tow trucks), much of this activity is not currently subject to sales tax under current law.

RECOMMENDATION FOR ACTION

Clarify current law to clearly impose tax on the services described above. A separate tax imposition statute is recommended to specifically impose tax on the towing or hauling of motor vehicles. In addition, the existing language in sec. 77.52(2)(a)10., Wis. Stats. (2005-06), with respect to towing should remain intact since there are still other situations where tangible personal property other than motor vehicles are "towed" and that service should be taxed (i.e., towing trailers, boats, etc.).

ADMINISTRATIVE IMPACT

According to the Wisconsin Towing Association, most of its members are currently taxing this type of service because they still consider their services to be "towing" and they have been taxing their towing services for years.

FAIRNESS /TAX EQUITY

The proposal would keep the playing field level between companies that provide "traditional" towing services (i.e., those that pull the motor vehicle behind their tow truck) and those that load motor vehicles up onto a flatbed truck for transportation. Both types of companies are providing the same service (e.g., moving a motor vehicle from one location to another), but they are providing the service using different types of equipment.

IMPACT ON ECONOMIC DEVELOPMENT

None.

FISCAL EFFECT

Based on information received from the Wisconsin Towing Association, most if not all of its members are currently collecting Wisconsin sales tax on the flatbed hauling of motor vehicles. This proposal would preserve the collection of the estimated \$2.4 million in FY 10 and \$2.5 million in FY 11 related to the flatbed hauling of motor vehicles. If this proposal is not adopted, the state could eventually lose these revenues.

DRAFTING INSTRUCTIONS

The following statutory language is suggested:

Create Section 77.52(2)(a)8., Wis. Stats. to impose Wisconsin sales and use tax on "The towing and hauling of motor vehicles, unless at the time of the towing or hauling, a sale in this state of the motor vehicle to the purchaser would be exempt from sales taxation under this subchapter, other than the exempt sale of a motor vehicle to a nonresident under s. 77.54(5)(a) and other than nontaxable sales under s. 77.51(14r)."

EFFECTIVE DATE AND/OR INITIAL APPLICABILITY

Effective the day after publication.

INTERESTED/AFFECTED PARTIES

Wisconsin Towing Association and Wisconsin Auto and Truck Dealers Association

DOR CONTACT PERSON

Diane Hardt, Division Administrator
(608) 266-6798

PREPARED BY

Craig Johnson, Staff Specialist
(608) 634-6794

KEEP

DOA - BB 0107 ...

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

in 9-23-08

MOVE

X

TAXATION ← head
OTHER TAXATION ← subhead

do not go

(1)

AN ACT to create 77.52 (2) (a) 8m. of the statutes; relating to: imposing sales

(2)

and use tax on the towing and hauling of motor vehicles to the budget ✓

Analysis by the Legislative Reference Bureau

Current law provides that the sales and use tax is imposed on the towing of tangible personal property, unless at the time of towing the sale of tangible personal property in this state would be exempt from the sales and use tax, not including the exempt sale of a motor vehicle to a nonresident and other certain nontaxable sales. This bill specifies that the sales and use tax is imposed on the towing and hauling of motor vehicles, unless at the time of towing or hauling a sale of the motor vehicle in this state would be exempt from the sales and use tax, not including the exempt sale of a motor vehicle to a nonresident and other certain nontaxable sales. ✓

For further information see the **state and local** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

3

SECTION 1. 77.52 (2) (a) 8m. ✓ of the statutes is created to read:

4

77.52 (2) (a) 8m. The towing and hauling of motor vehicles, unless at the time

5

of towing or hauling a sale in this state of the motor vehicle to the purchaser would

1 be exempt from the taxes imposed under this subchapter, not including the exempt
2 sale of a motor vehicle to a nonresident under s. 77.54 (5) (a) and nontaxable sales
3 described under s. 77.51 (14r).✓

4 (END)

2009-11 LRB Draft Review

Date: September 30, 2008

LRB Number: 0378/P1 – Towing and Hauling Motor Vehicles

Reviewed by: Craig Johnson

Brief Description of LRB Draft:

This bill clarifies that the towing of motor vehicles, whether behind a traditional tow truck or through the use of modern day "flat bed" tow trucks, is subject to Wisconsin sales and use tax.

Comments on Draft:

The Wisconsin Towing Association received a copy of the Department of Revenue's proposal (LRB 09-0041P1) and recommended that a reference be made in the statute to a "tow truck" as defined in sec. 340.01(67n), Wis. Stats. to help make it clear exactly what tax would be imposed on.

Section 340.01(67n), Wis. Stats. (2005-06), provides that " 'Tow truck' means a motor vehicle that is equipped with mechanical or hydraulic lifting devices or winches capable of, and used for, the recovery or transport or both of wrecked, disabled, abandoned, used or replacement vehicles."

The Department of Revenue agrees that this would help clarify what the tax would be imposed on.

In addition, in the title section under "Taxation" the draft indicates that this proposal relates to "Income Taxation". This should be changed to indicate that the proposal relates to "Sales and Use Taxation".

Changes Needed & Why:

It is recommended that on line 1 of LRB draft 0378/P1, the words "by a tow truck, as defined in sec. 340.01(67n), Wis. Stats." be inserted between "vehicles" and ",".



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-0378/P1

JK:jld:rs

RMR

DOA:.....Lillethun, BB0107 - Imposing the sales and use tax on towing and hauling motor vehicles

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

in 10-10-08

✓

do not gen

1

AN ACT ...; relating to: the budget. ✓

Analysis by the Legislative Reference Bureau

TAXATION

INCOME TAXATION ✓

by a tow truck

Subhead → OTHER

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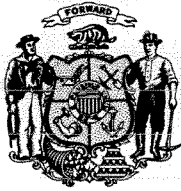
2

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2 of towing or hauling a sale in this state of the motor vehicle to the purchaser would
3 be exempt from the taxes imposed under this subchapter, not including the exempt
4 sale of a motor vehicle to a nonresident under s. 77.54 (5) (a) and nontaxable sales
5 described under s. 77.51 (14r).

6 (END)

by a tow truck, as defined in s. 340.01 (67n)



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-0378/P2

JK:jld:rs

DOA:.....Lillethun, BB0107 - Imposing the sales and use tax on towing and hauling motor vehicles

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

TAXATION

OTHER TAXATION

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77.52 (2) (a) 8m. The towing and hauling of motor vehicles by a tow truck, as defined in s. 340.01 (67n), unless at the time of towing or hauling a sale in this state of the motor vehicle to the purchaser would be exempt from the taxes imposed under this subchapter, not including the exempt sale of a motor vehicle to a nonresident under s. 77.54 (5) (a) and nontaxable sales described under s. 77.51 (14r).

(END)